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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re RILEY A., a Person
Coming Under the Juvenile
Court Law.

B290899
(Los Angeles County
Super. Ct. No.
18LJP00275A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and
Respondent,

v.

MONICA P.,

Defendant and
Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Rashida A. Adams, Judge. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

Monica P. (mother) appeals from the orders declaring minor Riley A. a dependent under Welfare and Institutions Code section 300, subdivision (b)(1).¹ Mother contends the court's jurisdictional findings are not supported by substantial evidence. We affirm the jurisdictional findings.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has two children: Riley A. (born December 2017) and his older half-brother, Tyler S.² Eric A. (father) is Riley's presumed father.³

² Tyler S. is around 17 years old, and was not a party to the current case. He was the subject of an earlier dependency case where mother appealed the court's jurisdictional findings. That case led to an appellate opinion that described mother's medical and emotional problems around the time of a 2014 jurisdictional and dispositional hearing as follows: "Mother suffers from medical problems and mental health issues. She has epilepsy, multiple sclerosis, and lupus, and has been diagnosed with depression and anxiety. . . . According to minor, when mother was depressed she would '[l]ay in bed all day and cry' and when she was anxious, she would 'get really freaked out very easily.'" (*In re Tyler S.* (June 18, 2015, B259466 [nonpub. opn.].) The dependency court terminated jurisdiction and released Tyler to his parents on January 11, 2017.

³ Father did not appeal the court's orders.

Preliminary Investigations

Riley initially came to the attention of the Los Angeles County Department of Children and Family Services (Department) shortly after he was born five weeks premature. In December 2017, when Riley was two days old and still in the hospital's neo-natal intensive care unit, mother accidentally dropped him when she dozed off while she was feeding him. Riley was closely examined and had a subdural hematoma and a two-millimeter skull fracture. There was no suspicion of abuse because mother was honest when reporting what happened and took responsibility for her lack of attention to the child. The following day, there were two incidents where Riley was at risk of falling. First, a nursing pillow fell to mother's feet while she attempted to adjust it, and Riley rolled onto the pillow. Later, mother asked the nurse to take Riley because mother was feeling anxious. Mother acknowledged she was previously addicted to pain pills, but she has been sober for three years and is on methadone through a clinic where she was in full compliance with her methadone treatment. The Department investigated the matter after receiving a referral and closed the matter as unfounded.

Over the next few months Riley's parents took him to the hospital for several medical issues. He was seen on January 1, 2018, for sleep issues, on January 11, 2018, for respiratory syncytial virus (RSV), and on February 23, 2018, for congestion.

On March 23, 2018, the Department received a new referral after Riley was taken by helicopter to Children's Hospital. According to the hospital staff, mother reported she was feeding Riley on the couch, and Riley emptied his bottle. Mother stood up with Riley in one hand and the bottle in the other, and Riley threw himself backwards and his head hit the table. Riley initially landed on cushions that had been placed on the floor to protect him from a fall, but he rolled off and hit his head on the leg of a table. Father was asleep at the time of the incident, but was awakened by mother yelling that the child was not breathing. Riley was crying initially, but then as the parents tried to get him to respond, he kept losing consciousness. The parents struggled to keep Riley awake, and so they called 911. Father reported that Riley was gurgling and in and out of consciousness when the paramedics arrived, which led to the decision to airlift the child to the hospital. According to hospital records, Riley was released the same day, and had no skull fractures, head injury, or internal bleeding. A CT scan showed an "old ossified right Parietal cephalohematoma" indicating a prior injury in the healing phase. Hospital staff clarified that the cephalohematoma was not from the most recent incident, and there was no way to know when the prior injury took place.

The Department investigated the incident in late March 2018, speaking to hospital staff, the social worker who investigated the December 2017 referral, mother, and father. A social worker visited the family home on March 30,

2018, and reported that Riley appeared healthy, alert, and aware. The home was clean and safe. During the social worker's visit, mother denied having heart issues or multiple sclerosis. She reported being treated for anxiety and depression three years ago, and being in a methadone treatment program based on her addiction to pain killers. Mother and father reported they have family support and do not need services, but are willing to participate with whatever is needed for Riley. The social worker observed mother falling asleep as she signed documents, and mother reported she was up late and did not have a nap.

Riley's detention

Social workers went to the family home on April 25, 2018, to place Riley into protective custody. Mother initially resisted, offering to leave the home so Riley could stay with father. Both parents were very emotional, but ultimately agreed to allow the Department to detain Riley. The Department filed a petition shortly thereafter, alleging under section 300, subdivision (b)(1), that mother "created a detrimental and endangering situation in that on 3/23/18 and on prior occasions the mother dropped the child resulting in the child sustaining injuries" and that father failed to protect the child because he knew of the situation and allowed mother to have unlimited access to the child. On April 30, 2018, the court found a prima facie case for detaining the child from parental custody. The court made

detention findings as to mother on May 1, 2018, but also found there were reasonable services available so that Riley could be released to father after mother moved out and father made child care arrangements.

Jurisdiction and disposition report

The Department's June 5, 2018 jurisdiction and disposition report contained summaries of interviews with mother, father, other relatives, and various health care providers. It also included medical records from several health care providers, including Riley's pediatric records and documentation of his prior hospital visits, including his visit to Children's Hospital after his fall in March.

During her interview with the social worker, mother stated she sees a counselor once a week, and had previously been diagnosed with a mood disorder, but it had been two years since she was on any medication for her anxiety or depression. After reporting that she was not working, mother shared that she has a social anxiety disorder, multiple sclerosis, and epilepsy, but she did not experience any symptoms or seizures as long as she took care of herself, ate healthy, and drank plenty of water. She had not seen a neurologist in two years and had not had a seizure during that time. The social worker interviewed paternal aunt, who explained that she had only met mother three or four times, but noted that at the detention hearing and during a later

visit that paternal aunt monitored, mother seemed groggy and sleepy.

An addendum report by the Department included a summary of the social worker's interview with a maternal aunt, who reported that mother has multiple sclerosis and is epileptic, and had taken medication in the past. Although mother denied having any seizures in the past two years, maternal aunt believed mother had one or two seizures during her pregnancy. She also believed mother's doctor was aware of the seizures and treated mother's pregnancy as high risk. When the social worker asked mother about the times she had been observed to be falling asleep, she denied methadone made her drowsy. Mother attributed her initial sleepiness to the fact that she had been sleeping in the hospital waiting room for 13 days when Riley was first born. Regarding falling asleep in court and with the social worker, mother claimed she was stressed and lacking sleep.

Adjudication and disposition hearings

Mother testified at the adjudication hearing, stating that she understood the seriousness of the two incidents when she dropped Riley. She was in individual counseling and parenting classes, and she took seriously the need to babyproof her home. Mother had been in the hospital for five days before delivering Riley, and had gone about 13 days with little or no sleep when the first incident occurred. With respect to the second incident, she wasn't paying close

enough attention because the baby was fussing and she was getting up to make a bottle when he fell. Mother had learned always to pay more attention even if the baby is upset.

On cross-examination by the Department, mother testified she had been diagnosed with epilepsy nine years ago. She denied ever receiving a diagnosis of multiple sclerosis, but acknowledged that two years ago a scan showed two lesions on her brain, which could be a sign of multiple sclerosis. Mother also suffers another symptom of multiple sclerosis, where severe heat causes her to be ill. In addition, swelling in her legs makes it difficult for her to walk too much or take the bus. Mother said the doctors questioned whether the first incident might have been a petit mal seizure, but she took full responsibility for falling asleep and it was not a seizure that caused Riley to fall. Mother denied that either of Riley's falls were the result of her medical condition, and affirmed that she has family support in place to assist her.

Mother's counsel asked the court to dismiss the petition, based on the fact that mother had taken full responsibility for the two incidents and had family support in place. Father's counsel joined in mother's request to dismiss the petition, or alternatively to strike the allegations against father. Minor's counsel agreed with striking the allegations against father, but asked the court to sustain the allegations against mother. The Department emphasized that it did not question the parents' good intentions, but

there were concerns that the child would not be safe in parents' care until mother was able to do more about her own health issues.

The court made minor amendments to the petition allegations to reflect the evidence presented at trial, and struck the allegations about father's failure to protect.⁴ It sustained the amended allegations, stating, "The evidence before the court does not establish exactly why these incidents happened, but the evidence before the court does indicate that there are two instances of the child being dropped and hitting the floor, which the parents acknowledge. It's unrefuted. ¶ This is a very young child. There are already injuries that have been sustained and the court listened to mother's testimony, which the court found to be genuine, but it doesn't actually change the fact of what actually has happened in this case."

⁴ The allegation as amended read as follows: "The child Riley [A.]'s mother, Monica [P.] created a detrimental and endangering situation in that on 3/23/18 and on a prior occasion the mother dropped the child resulting in the child sustaining injuries. On 3/23/18, the child was diagnosed with an old ossified right parietal cephalohematoma which is in the process of remodeling and a small frontal scalp abrasion. On 1/1/18, the child was diagnosed with a 2mm subdural hematoma. Such detrimental and endangering situation established by the mother and the father's inability to protect the child endangers the child's physical health and safety, and places the child at risk of serious physical harm, damage, danger and failure to protect."

Turning to disposition, the court heard argument from all sides and then found the Department had not shown by clear and convincing evidence that removal was necessary and there were no means to protect the child without removal. Over the Department's objections, the court ordered Riley to be placed with both parents, under supervision of the Department. Mother was to continue with her services and was to participate in a medical evaluation to determine whether there were any underlying health issues.

DISCUSSION

Mother contends on appeal there was insufficient evidence to support the court's findings that, at the time of the dispositional hearing, Riley was at current or future substantial risk of suffering serious physical harm or illness because of mother's failure or inability to protect the child. We disagree.

"We review the juvenile court's findings and orders to determine whether they are supported by substantial evidence." (*In re M.R.* (2017) 8 Cal.App.5th 101, 108.) We look "to see if substantial evidence, whether contradicted or uncontradicted, supports the findings." (*In re Alexander C.* (2017) 18 Cal.App.5th 438, 446.) The appealing party "bear[s] the burden to show there was no evidence of a sufficiently substantial nature to support those findings and orders. [Citation.] We draw all reasonable inferences from

the evidence to support the findings and orders of the juvenile court and review the record in the light most favorable to the court's determinations; we do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the trial court's findings. [Citation.] Thus, we do not consider whether there is evidence from which the juvenile court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw." (*In re M.R.*, *supra*, 8 Cal.App.5th at p. 108.)

Under section 300, subdivision (b)(1), a child may be found a dependent when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." Section 300, subdivision (b)(1) "authorizes dependency jurisdiction without a finding that a parent is at fault or blameworthy for her failure or inability to supervise or protect her child." (*In re R.T.* (2017) 3 Cal.5th 622, 628–629, 637, fn. 6 [disapproving *In re Precious D.* (2010) 189 Cal.App.4th 1251, and rejecting the reasoning requiring parental neglect for jurisdiction as set forth in *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820].)

Here, there was substantial evidence to support the court's jurisdictional finding that Riley was at risk of harm.

The record contains unrefuted evidence that mother had dropped Riley on two separate occasions, once when he was only two days old and again when he was just over three months old. In addition, there is evidence that mother suffers from epilepsy and multiple sclerosis, and that she had not taken medication or sought treatment or an evaluation for either condition in the last two or three years.

To support her contention that there is insufficient evidence to support the court's jurisdictional finding, mother first argues the court erroneously believed that Riley had been injured on two occasions, when the record only contained evidence of injury from the first fall. She also argues the court mistakenly believed that references to cephalohematoma and a subdural hematoma were to distinct injuries from the two falls, whereas a cephalohematoma is benign swelling under the scalp caused by birth trauma. Mother's argument ignores the fact that Riley's second fall was serious enough that she and father reported the child had difficulty breathing and lost consciousness, and that Riley's condition warranted helicopter transport to Children's Hospital, even if the fall did not result in any significant injury. The court was focused on the fact that mother had dropped Riley twice, and admitted to a lack of attention when caring for her child, not the number of injuries Riley sustained.

The record also contains the observations of several persons, including social workers, hospital employees, and relatives monitoring mother's visits with Riley, that mother

was either groggy or falling asleep. Mother argues that the Department had not shown that mother's prescribed use of methadone, her epilepsy, or her preliminary diagnosis of multiple sclerosis caused an inability to care for her child. There is no direct evidence that mother's unaddressed health issues or her methadone use caused her to drop Riley at the hospital or at home, but there is evidence mother's drowsiness affects her ability to effectively function on a day-to-day basis, and the Department's reports express concern about mother's unwillingness consider whether her health problems or methadone use might be contributing factors. Mother admitted she had not seen a neurologist for her epilepsy or a doctor for her multiple sclerosis for the last two years. There is also evidence that the doctor at her methadone clinic was unaware of those health issues.

Considering all the evidence before the dependency court, we cannot say that there was insufficient evidence to support asserting jurisdiction over Riley, especially considering incidents where mother dropped Riley in the overall context of mother's health problems and repeated instances of sleepiness. The decision to exercise jurisdiction does not hinge exclusively upon a finding of parental fault. (*In re R.T.*, *supra*, 3 Cal.5th at p. 624.) The court's focus is whether the circumstances as a whole justify the court's decision to assume jurisdiction in this case. Here, the evidence presented by the Department was sufficient to justify the exercise of jurisdiction.

DISPOSITION

The court's jurisdictional findings are affirmed.

MOOR, J.

WE CONCUR:

BAKER, Acting P. J.

KIM, J.